



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 23rd day of February, 1999

Application of

RENO AIR, INC.

AMERICA WEST AIRLINES, INC.

for an exemption from 14 C.F.R. Part 93,
Subparts K and S, pursuant to 49 U.S.C. §
41714(c); (Reno-Chicago O'Hare Airport slots)

Dockets OST-1997-2771

OST-1999-5030

ORDER ON MOTION TO REOPEN THE RECORD

SUMMARY

By this Order, we are denying the motion of United Air Lines, Inc. (United) to reopen the record in Docket OST-1997-2771 and reallocate to another qualified airline the slot exemptions now held by Reno Air, Inc. (Reno Air).

BACKGROUND

By Order 94-9-30, issued September 20, 1994, the Department granted Reno Air five slot exemptions under 49 U.S.C. § 41714(c) to enable the airline to conduct three daily, nonstop round-trips in the Reno, Nevada-Chicago (O'Hare Airport) market. The Department found that Reno Air was a new entrant as defined in 49 U.S.C. § 41714(h)(3) and noted that Chicago was Reno Air's largest market without nonstop service. The Department also noted that the Reno-O'Hare market had previously received nonstop service, and that Reno Air's proposed restoration of such service should be viable. Finally, the Department found that Reno Air had made a reasonable attempt to acquire O'Hare Airport slots through the marketplace but was unsuccessful. The slot rule represented the main impediment preventing airlines from providing nonstop service in this market.

THE RENO AIR AND AMERICAN AIRLINES, INC. MERGER

On January 12, 1999, American Airlines, Inc. (American) announced that it had reached an agreement with Reno Air to purchase all outstanding stock of Reno Air. More specifically, Bonanza Acquisitions, Inc. and American, both wholly owned subsidiaries of AMR Corporation, filed a schedule 14C Information Statement with the U.S. Securities and Exchange Commission (SEC) stating that Bonanza Acquisitions is a newly created Nevada corporation, organized in connection with American's plan to purchase Reno Air. The Information Statement declares the purpose of the Bonanza Acquisitions and American

tender offer to buy all outstanding shares of Reno Air to be the merger of Bonanza Acquisitions and Reno Air. The resulting entity would become a wholly owned subsidiary of the parent company, American Airlines, Inc. American will manage the subsidiary as part of the Airline Group of the AMR Corporation, although the subsidiary's operations would be substantially similar to the previous operation. The first phase of the merger, the \$124 million cash tender offer, is complete.

RESPONSIVE PLEADINGS

United

On January 7, 1999, United filed a Motion to Reopen the Record in this docket. United asked that the slots previously awarded to Reno Air for new entrant service in the Reno-O'Hare market be withdrawn and made available for allocation to another qualifying applicant. United asserts that since Reno Air is now owned by and has become part of American, Reno Air has lost its new entrant status. United argues that Reno Air's status is now analogous to that of Simmons Airlines, Inc. d/b/a American Eagle in Orders 98-4-21 and 97-10-16, wherein we denied American Eagle, an American subsidiary, new entrant status because it was owned and operated by American. United further states that there is no reason to presume that American will maintain the Reno Air low-fare service in the Reno-O'Hare market. Finally, United argues that if American chooses to continue nonstop service to Reno through Reno Air, American can easily obtain slots from its own substantial slot holdings.

American

On January 19, 1999, American filed an answer opposing the motion. American says that Reno Air will continue to operate three daily round-trip flights in the Reno-O'Hare market. American maintains that United's position that it does not qualify as a new entrant is not relevant, since Reno Air was a new entrant at the time of the slot exemption awards in 1994.

Reno Air

On January 19, 1999, Reno Air also filed an answer in opposition to United's motion. It argues that the primary beneficiary of these contested slot exemptions is the Reno-Chicago traveling and shipping public and that the public interest will be served by maintaining the Reno-O'Hare nonstop service, not by withdrawing it. Reno Air's position is that the Department properly awarded these five slot exemptions to a fully qualified carrier,¹ and that American's acquisition of Reno Air does not constitute a prohibited sale, trade or transfer of the temporary slot exemptions within the meaning of Order 94-9-30.

¹ The Department also subsequently granted Reno Air two additional slot exemptions for the same market, but Reno Air did not activate them. Therefore, by letter dated January 19, 1999, the Department rescinded them.

The Airport Authority of Washoe County and the Reno/Tahoe Air Service Task Force (the Reno/Tahoe Parties)

On January 19, 1999, the Reno/Tahoe Parties filed an answer opposing United's motion. They argue that the slot exemptions granted by the Department to Reno Air should be retained and operated by American through Reno Air, "as long as the slots are used to provide nonstop service between Reno and Chicago O'Hare as required by Order 94-9-30." In support of their position, they note the substantial economic benefits realized by the Reno/Tahoe community because of the nonstop service of Reno Air. The Reno/Tahoe parties also note that Reno area passengers and shippers will benefit by now having access to the American domestic network.

United

On January 28, 1999, United filed a motion for leave to file an unauthorized document and a reply. United maintains that precedent does not support the opposing parties' contention that Reno Air can now continue to hold the Reno-O'Hare slot exemptions merely because Reno Air was eligible to hold them when they were first awarded. United restates its view that the findings and conclusions relied upon by the Department for issuing these slot exemptions to Reno Air do not apply to American nor do they now apply to Reno Air, now that it is owned by American. Finally, United contends that if the Department decides not to reopen the record of this case, it should open another proceeding to address those issues, among others, relating to the acquisition of Reno Air by American.

American and Reno Air

On February 8, 1999, American and Reno Air filed motions for leave to file unauthorized documents and replies. They argue that there is no public policy reason for the Department to withdraw slots that are being used for on-going operations. They also assert that it would be contrary to the public interest to end services that the Department has found to be in the public interest and that have been operated continuously for a period of years.

ANCILLARY MATTERS

American West Airlines, Inc. (America West)

On January 21, 1999 (Docket OST-1999-5030), America West filed an application requesting that the Department grant it an exemption pursuant to 49 U.S.C. § 41714(c) to enable it to initiate service in the Reno-Las Vegas-O'Hare market.² America West asks that the Department reallocate the five slot exemptions currently held by Reno Air. America West states that it falls within the definition of a limited incumbent carrier as defined by 14 C.F.R. § 93.213(a)(5), and qualifies as a new entrant under 49 U.S.C. § 41714 (h)(3).

² On February 5, 1999, ACA, American, Reno Air, the Reno/Tahoe Parties and United filed answers opposing the American West application. On February 12, 1999, America West filed a reply.

In support of its application, America West concurs with United's motion. It says that the transfer of the Reno Air slot exemptions to America West will enable it to offer highly competitive service in the affected market and at the same time initiate much needed competition in the Las Vegas-O'Hare market.

Atlantic Coast Airlines d/b/a United Express (ACA) and American Eagle Airlines, Inc. (American Eagle)

On January 28, 1999, ACA filed a motion for leave to file an unauthorized document and a reply. Atlantic Coast reminds the Department that it has on file an application for an exemption under 49 U.S.C. § 41714(c) to enable it to conduct Savannah/Hilton Head-O'Hare operations. ACA asks the Department to act on its pending request.³

On February 8, 1999, American Eagle filed a motion for leave to file an unauthorized document and a response. American Eagle says that it has a competing application with ACA for slot exemptions at O'Hare Airport, and it adopts and incorporates by reference its pleadings in Dockets OST-1998-3982 and OST-1998-4647.

DECISIONAL CRITERIA

The Federal Aviation Administration Authorization Act of 1994 requires that an application be in the public interest and, for a new entrant carrier, that it demonstrates that there are exceptional circumstances.⁴ In general, first, we favor proposals that are based on jet aircraft that meet Stage 3 noise requirements; second, there should be a reasonable expectation that the proposed service would be operationally and financially viable; and third, we place a premium upon the introduction of (a) new nonstop services where none exist and (b) new competitive services, especially by applicants that have demonstrated potential to offer low-fare competition, where there is single-carrier service and the market could support entry, or where exiting services do not produce meaningful price competition.

DECISION

We have carefully considered the pleadings filed by United and the responses by interested parties and, on balance, find that United's motion should be denied.

As an initial matter, the Department grants slot exemptions where the proposed services meet the following statutory criteria: that the proposed slot exemptions are consistent with the public interest, and that exceptional circumstances exist which warrant the grant of the requested slot exemptions. The Department has stated that it reserves the right to modify or terminate slot exemption authorities if it determines that due to changed circumstances these

³ Consistent with our standard practices, we will decide these matters on a case-by-case basis. See Docket OST-1998-3982, filed June 24, 1998.

⁴ For a detailed explanation of the decisional guidelines used by the Department in these matters see Orders 97-10-16 and 97-10-17.

criteria are no longer satisfied by an applicant's use of the authority.⁵ Our policy guidelines envisage that we will endeavor to enable applicants to initiate price-competitive services where little or none exists or to fill service voids in underserved domestic markets.

The Department awarded Reno Air the five slot exemptions at issue based on its new entrant status, and the exceptional circumstances presented by the needs of the Reno/Tahoe community and the nonstop service void in the Reno-O'Hare market.⁶ Order 94-9-30 granting slot exemption authority to Reno Air limited the use of these slot exemptions to providing nonstop service between Reno, Nevada, and Chicago's O'Hare Airport, at specified departure and arrival times. The record shows that Reno Air has continued to provide these services to the Reno/Tahoe community consistent with Order 94-9-30.

United correctly argues that Reno Air would not now qualify for these slot exemptions as a new entrant, since American is in the process of making Reno Air a wholly owned subsidiary.⁷ United also argues that the merger has effectuated a "*de facto*" transfer of the slot exemption authorities to American, in violation of the explicit proscription of selling, trading or transferring slot exemption authority contained in Order 94-9-30. The Department does not agree. The proscription of selling, trading and transferring slot exemption authority was intended to prevent the formation of a market for slot exemption authority. Because mergers present a substantially different market than one trading slot exemptions, the Department has the discretion to treat the effect of the merger between Reno Air and Bonanza Acquisitions as not violating the proscription against selling, trading and transferring slot exemption authority.

Whether the Department exercises its discretion to rescind an award of slot exemptions depends on public interest considerations. Our public interest assessment of this case weighs in favor of allowing Reno Air to continue these operations. Among other things, the record indicates that withdrawal of these services by the Department would have a severe and adverse impact on the economy of Reno/Tahoe and the State of Nevada. It is also clear that ending these services would be especially disruptive to the traveling and shipping public.⁸ We note that the record shows that in the four years since Reno Air began daily nonstop service, the Reno-O'Hare market has more than tripled, increasing from 56,890 annual Origin and Destination Survey of Passenger Traffic (O&D) passengers in 1994, to 166,650 annual O&D passengers in 1997. Our actions here will prevent the termination of these operations, ensure continued enhancement of air services between Reno and Chicago, and continue to

⁵ For example, see Order 97-10-16, at 11.

⁶ See Order 94-9-30, at 5.

⁷ See Order 97-10-16, at 10.

⁸ Reno Air provides the only nonstop operations in the Reno-Chicago market. America West provides daily one-stop service, and Delta Air Lines, Inc. provides one-stop service four times a week.

provide the public with improved passenger and shipping options. Furthermore, we fully intend to monitor Reno Air's operations in this market to ensure that the Reno/Tahoe community continues to receive air service consistent with our exceptional circumstances criteria, including low-fare competitive service.

The Department limits the effect of this order to a temporary grant of authority intended to preserve these public interest considerations. However, especially given the limited availability of slot exemptions, we will remain postured to revisit this issue should circumstances change. Changed circumstances include, for example, equivalent,⁹ economically viable, price competitive, and legally supported service proposed by another carrier, such that the slot exemption authority does not have the secondary effect of adhering to the advantage of a large carrier such as American. In order to use the slot exemption authority originally granted to Reno Air, the corporation resulting from the merger of Bonanza Acquisitions and Reno Air must adhere to the same restrictions on the use of the slot exemption authority provided in Order 94-9-30.

Although United requested, in the alternative, that the Department open a proceeding to address other issues raised by this merger, United has not set forth the substance of any issues not addressed by this Order. Furthermore, we note that the Department of Justice has found no anticompetitive implications in the partially accomplished merger warranting a further review under the Hart-Scott-Rodino Antitrust Improvements Act.

As a final matter, since we have determined it appropriate to allow Reno Air to retain these Reno-O'Hare slot exemptions, we will dismiss the America West application for their reallocation. We take this action without prejudice to its filing for this authority in the future.

ACCORDINGLY,

1. We deny the motion of United Air Lines, Inc. to reopen the record of this case;
2. We dismiss the America West Airlines' application for slot exemptions in the Reno, Nevada-Chicago O'Hare market (Docket OST-1999-5030). We are taking this action without prejudice to the carrier's filing for this authority in the future;
3. We grant all motions for leave to file otherwise unauthorized documents; and

⁹ Although America West has proposed an alternate use for the slot exemptions at issue, that use is not equivalent. America West has proposed using the slot exemptions to provide one-stop O'Hare-Reno service, via Las Vegas, Nevada, not nonstop O'Hare-Reno service.

4. We will serve this Order on all interested parties in this proceeding.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*